

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-08775-H2T  
OC: 08-15-04 R: 03  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 22, 2005, reference 07, decision that denied benefits. After due notice was issued, a hearing was held on September 12, 2005. The claimant did participate. The employer did participate through Amy Victor, Human Resources Representative.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a woodworker full time beginning June 20, 2005 through July 22, 2005 when she was discharged. The claimant was discharged for excessive unexcused

absenteeism. The claimant was last absent from work on July 21, 2005 when she was involved in a car accident while on her way to work. On July 21 it was raining and the claimant's windshield wipers quit, causing her to drive into the ditch. A police officer who stopped to assist the claimant used his cell phone to call the employer and inform them of her absence. The claimant had last been warned on July 11 that one more incident of unexcused absenteeism would result in her discharge. Previous unexcused absences for the claimant include: June 27 when she was two minutes late punching into work, July 7 when she left work sick after vomiting in the plant, and on July 9 the claimant was absent to attend a doctor's appointment for which she presented a note to her Supervisor when she returned to work.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
  - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The July 21 accident was due to malfunctioning car equipment and cannot rightfully be held against the claimant. The Iowa Court of Appeals held it was not misconduct when a claimant went into a ditch to avoid hitting a deer. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395 (Iowa App. 1985). The accident the claimant was involved in was not her fault as she could not control safety equipment malfunctions. Additionally, the claimant's two absences of July 7 and July 9 were due to properly reported illnesses. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

An employer's no fault attendance policy is not dispositive of the issue of entitlement to unemployment insurance benefits. The claimant was only absent without excuse would be her absence on June 27 when she was two minutes late to work. One incident of tardiness is not disqualifying, as it does not meet the excessiveness standard. Benefits are allowed.

DECISION:

The August 22, 2005, reference 07, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjf